63

Supreme Court, U.S.
FILED

07-379 SEP 18 2007

OFFICE OF THE CLERK

No. (1)

In the Supreme Court of the United States

LEONARD W. KROUNER,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

On Petition for a Writ of Certiorari to the Florida Supreme Court

PETITION FOR WRIT OF CERTIORARI

LEONARD W. KROUNER
4196 MT. HUKEE AVENUE
SAN DIEGO, CA 92117-4732
(858) 277-5323

Petitioner pro se

September 17, 2007

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

I.

Did the Florida Supreme Court violate the United States Constitution Article IV, § 2, cl. 1 privileges and immunities protection of petitioner and other nonresident Florida bar members by making "home state" bar readmission a condition of Florida bar readmission after disbarment thereby lengthening the period of disbarment for petitioner and other nonresident Florida bar members beyond that resident Florida bar members would suffer for similar misconduct?

II.

Did the Florida Supreme Court violate the United States Constitution Amendment 5 and 14 due process rights of petitioner and other nonresident Florida bar members by adopting the disbarment order of a state such as New York imposed without notice of charges or hearing under New York Judiciary Law § 90 automatically upon commission of a felony when Florida attorney discipline procedure in the *Rules Regulating the Florida Bar*, Rule 3.7-6, provides for notice and hearing to determine sanction after commission of a felony?

III.

Did the Florida Supreme Court violate the United States Constitution Amendment 6 right of petitioner and other Florida bar members convicted of a felony not to suffer punishment in addition to that recommended by the trier of fact unless additional aggravating facts are found recognized in *Ring v. Arizona*, 536 U.S. 584, 588-599, 602 (2002); *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Blakely v.*

Washington, 542 U.S. 296 (2004); *United States v. Booker,* 543 U.S.220 (2005); and, *Cunningham v. California,* ___ U.S.____, 2007 Lexis 1324 (No.05-6551) (2007), when it increased the length of petitioner's disbarment beyond that recommended by the Florida Bar Referee without finding any additional aggravating facts not found by the Referee?

IV.

Did the Florida Supreme Court violate the petitioner's United States Constitution Amendment 5 and 14 due process right to notice of charges in an attorney disciplinary proceeding recognized in *In re Ruffalo,* 390 U.S. 544 at 550 (1968), by approving the Florida Referee's disbarment of petitioner for an "... attempted misrepresentation to either the [New York Supreme Court Albany County] sentencing court or to this referee..."(App. D, p.18a) **which attempted misrepresentation was not charged** in the Florida Bar Complaint against petitioner docketed May 11, 2004 initiating the Florida attorney disciplinary process ?

V.

Did the Florida Supreme Court violate the petitioner's United States Constitution Amendment 5 and 14 due process rights by making "home state" bar readmission a condition of Florida bar readmission without defining "home state" which is not otherwise defined in Florida statutes, regulations, and cases, where petitioner was first admitted to law practice in New York but is currently domiciled in California ?

RULE 14.1(b) STATEMENT

The parties to this proceeding in the Florida Supreme Court are:

Respondent: Leonard W. Krouner

Complainant: The Florida Bar

TABLE OF CONTENTS

QUESTIONS PRESENTED i

RULE 14.1(b) STATEMENT iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES x

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

A. Without Finding Any Additional Aggravating Facts Not Found by the Referee the Florida Supreme Court's "Permanent Practical Disbarment" of Petitioner Starts the Disbarment Period Three Years and Ten Months after the Date Recommended by the Referee and Requires Readmission in New York as a Condition of Readmission in Florida Which Sanction Was Rejected by the Referee 8

B. Florida Disbarred Petitioner for Seeking License Suspension in the Florida Disciplinary Proceeding Which it Held to Be an Attempted Misrepresentation Based upon Petitioner's

Comments Prior to the New York Sentencing. Attempted Misrepresentation Based upon Presentence Comments in New York Was Not Charged as Misconduct in the Florida Disciplinary Complaint. Petitioner Attempted No Misrepresentation by Participating in the Florida Attorney Disciplinary Process after Consenting to Suspension of His Florida Bar License. 10

C. The Florida Supreme Court Disbarment Order Did Not Mention or Apply the *Selling V. Radford*, 243 U.S. 46, 48 (1917), Criteria Adopted in *Florida Bar v. Karahalis*, 780 So.2d 27 (Fla. 2001) When Making Readmission to Petitioner's "Home State" a Requirement of Readmission to the Florida Bar Regardless of Whether the Home State Procedure for Determining Disbarment Was Due Process Deficient or the Home State Sanction Was a "Gross Injustice" as Punishment for Illness-Induced Misconduct. 12

REASONS FOR GRANTING PETITION 13

I. RESIDENCE IS A CONSTITUTIONALLY IMPERMISSIBLE BASIS UPON WHICH TO INCREASE PUNISHMENT IN ATTORNEY DISCIPLINE PROCEEDINGS. FLORIDA'S HOME STATE BAR READMISSION RULE VIOLATES U.S. CONSTITUTION ARTICLE IV, § 2, Cl. 1 PRIVILEGES AND IMMUNITIES BY MAKING THE DISBARMENT PERIOD FOR NONRESIDENT FLORIDA BAR MEMBERS LONGER THAN RESIDENT FLORIDA BAR MEMBERS FOR THE SAME MISCONDUCT AS IT WILL DO FOR

PETITIONER BEYOND THAT WHICH RESIDENT FLORIDA BAR MEMBERS WOULD SUFFER FOR THE SAME MISCONDUCT UNLESS THE FLORIDA DISBARMENT ORDER IN THIS CASE IS REVERSED 14

II. THE RULING BELOW CONFLICTS WITH SUPREME COURT RULINGS WHICH PROHIBIT SANCTIONING AN ATTORNEY FOR UNCHARGED MISCONDUCT, GIVING LEGAL EFFECT TO ANOTHER JURISDICTION'S SANCTION ORDER WHICH IS A "GROSS INJUSTICE" AS PUNISHMENT FOR ILLNESS-INDUCED MISCONDUCT AND RENDERED WITHOUT NOTICE OF CHARGES AND A HEARING, AND INCREASING THE SEVERITY OF PUNISHMENT IN A QUASI-CRIMINAL PROCEEDING WITHOUT FINDING ADDITIONAL FACTS NOT FOUND BY THE *NISI PRIUS* FACT FINDER 16

A. Florida Depriving Petitioner of Property and Reputation By Disbarment for Uncharged Misconduct Conflicts With U.S. Supreme Court Decisions 16

B. Florida's Giving Legal Effect to New York's Disbarment Order Which Is a "Gross Injustice" as Punishment for Illness-Induced Misconduct and Rendered Without Notice of Charges or a Hearing Conflicts with United States Supreme Court and Florida Supreme Court Cases . . . 18

C. The Florida Supreme Court's Imposing a Harsher Punishment than Recommended by the Referee Without Finding Additional Aggravating Facts Violates Petitioner's Sixth Amendment Right Recognized in *United States v. Booker*, 543 U.S. 220 (2005) ("*Booker*") 20

III. UNIFORM CONSTITUTIONAL DUE PROCESS PROCEDURES ARE NEEDED TO RESOLVE CONFLICTS AMONG STATE AND AMONG FEDERAL COURTS CONCERNING REQUIRED DUE PROCESS PROCEDURES IN FELONY ATTORNEY DISCIPLINARY CASES 21

IV. REVIEW IS REQUIRED TO DETERMINE WHETHER STATES CAN DISBAR ATTORNEYS FOR GOOD FAITH PARTICIPATION IN THE ATTORNEY DISCIPLINARY PROCESS, AND TO DETERMINE WHETHER NOT CONSIDERING ILLNESS INDUCED MISCONDUCT TO MITIGATE SANCTION IN A STATE ATTORNEY DISCIPLINE PROCEEDING VIOLATES THE AMERICANS WITH DISABILITIES ACT 23

CONCLUSION 24

APPENDIX:

Appendix A: Supreme Court of Florida denial of rehearing on the merits (June 19, 2007) 1a

Appendix B: Supreme Court of Florida disposition order (Mar. 21, 2007) 3a

Appendix C: Supreme Court of Florida order making petitioner's license suspension effective nunc pro tunc (Mar. 1, 2004) 5a

Appendix D: Amended Report of the Referee assigned by the Supreme Court of Florida (Mar. 28, 2005) . . 7a

Appendix E: Constitutional and Statutory Provisions involved 22a

U.S. Const. art. III 22a

U.S. Const. art. IV, § 2, cl. 1 . . . . . 22a

U.S. Const. amend. I 23a

U.S. Const. amend. V 23a

U.S. Const. amend. VI 23a

U.S. Const. amend. XIV 23a

42 U.S.C. § 12131 . . . . . 24a

42 U.S.C. § 12132 . . . . . 25a

Fla. Bar Rule 3-7.6 . . . . . 26a

Fla. Bar Rule 3-7.7 . . . . . 30a

Fla. Stat. § 90.202 . . . . . 32a

Fla. Stat. § 90.203 . . . . . 33a

Fla. Standards for Imposing Lawyer Sanctions 1.3 . . . . . 34a

Fla. Standards for Imposing Lawyer Sanctions 2.2 . . . . . 35a

Fla. Standards for Imposing Lawyer Sanctions 3.0 . . . . . 35a

Fla. Standards for Imposing Lawyer Sanctions 9.2 . . . . . 36a

Fla. Standards for Imposing Lawyer Sanctions 9.3 . . . . . 37a

NY CLS Jud § 90 . . . . . 39a

Appendix F: Exhibit 2 Received at March 3, 2005, Florida Referee's Hearing (Roche Affidavit) 41a

Appendix G: Appellant's Request for Compulsory Judicial Notice in the Florida Supreme Court (served Dec. 17, 2006) 45a

Appendix H: Excerpts – Florida Supreme Court Case Docket 47a

Appendix I: Excerpts - Appellant's Post Argument Submission in the Florida Supreme Court (posted Nov. 7, 2006) 49a

Appendix J: Appellant's Initial Brief to Review Amended Report of the Referee Signed March 28, 2005 (forwarded prior to Feb. 26, 2006) 53a

TABLE OF AUTHORITIES

Cases

Apprendi v. New Jersey,
530 U.S. 466 (2000) i

Blakely v. Washington,
542 U.S. 296 (2004) i

Cunningham v. California,
___ U.S.___, 2007 Lexis 1324 (No.05-6551)
(2007) ii

Discipline of McLendon,
120 Wash. 2d 761, 845 P.2d 1006 (Wash. 1993) . . 25

Florida Bar v. Jahn
509 So.2d 285 (Fla. 1987) 19

Florida Bar v. Karahalis,
780 So.2d 27 (Fla. 2001) . . . . . passim

Florida Bar v. Sanders,
580 So.2d 594 (Fla. 1991) 8, 12, 17, 25

Florida Bar v. Untracht,
923 So.2d 457 (Fla. 2006) 8, 12, 17, 25

Florida Bar v. Wilkes,
179 So.2d 193 (Fla. 1965) . . . . . passim

In re Cappell,
866 A.2d 784 (D.C. 2004) 25

In re Gault,
387 U.S. 1 . . . . . 17, 20

In re Ruffalo,
390 U.S. 544 (1968) . . . . . ii, 13, 17, 20

In re Steven Kramer,
282 F.2d 721 (9th Cir. 2002) 18, 22

In re Thies,
662 F.2d 771 (D.C. Cir. 1980) 18, 22

In re Tidwell v. Grievance Committee, et al.,
295 F.3d 331 (2d Cir. 2002) 21

In re Weiss,
839 A.2d 670 (D.C. 2003) 25

Malloy v. Hogan,
378 U.S. 1 (1994) 17

Martin v . Hunter's Lessee,
14 U.S. (1 Wheat. 304, 4 L. Ed. 97 (1816)) 2

Matter of Jones,
506 F.2d 527 (8th Cir. 1974) 18, 22

Ring v. Arizona,
536 U.S. 584 (2002) . . . . . i, 20

Rosenthal v. Justices of the Supreme Court of California,
910 F.2d 561 (9th Cir.1990) 18, 22

Selling v. Radford,
243 U.S. 46 (1917) . . . . . passim

Supreme Court of New Hampshire v. Piper,
470 U.S. 274 (1985) 15

United States v. Booker,
543 U.S. 220 (2005) . . . . . ii, 20, 21

United States v. Kras,
409 U.S. 434 (1973) 11, 17

Wisconsin v. Constantineau,
400 U.S. 433 (1971) 17

Constitutional and Statutory Provisions

U.S. Const. amend. 1 2

U.S. Const. amend. 5 . . . . . i, ii, 2, 15

U.S. Const. amend. 6 . . . . . i, 2, 21

U.S. Const. amend. 14 . . . . . i, ii, 2

U.S. Const. amend. 14, § 1 . . . . . 2, 15

U.S. Const. art. III, § 2, cl. 2 2

U.S. Const. art. IV, § 2 15

U.S. Const. art. IV, § 2, cl. 1 . . . . . i, 2, 5, 14

U.S. Const. art. VI, cl. 2 2

28 U.S.C. § 1257(a) 2

28 U.S.C. § 1257(b) 2

28 U.S.C. § 2101(c) 2

Americans With Disabilities Act,
42 U.S.C. § 12131 *et seq.* 3, 23

Americans With Disabilities Act,
42 U.S.C. § 12131 23

Americans with Disabilities Act,
42 U.S.C. § 12132 23

Florida Statutes § 90.202 . . . . . 6, 12

Florida Statutes § 90.203 . . . . . 6, 12

New York Judiciary Law § 90 . . . . . passim

New York Judiciary Law § 90(4)(a) 18, 22

New York Judiciary Law § 90(4)(b) 18, 22

Rules

S. Ct. R. 10(a) 13

S. Ct. R. 10(c) 13

S. Ct. R. 13(1) 2

S. Ct. R. 13(3) 2

S. Ct. R. 14(d) 1

American Bar Association Standards for Imposing Lawyer Sanctions 25, 26, 27

Florida Rule of Discipline 3-7.6 of the *Rules Regulating the Florida Bar* . . . . . i, 22

Florida Rule of Discipline 3-7.6(b) of the *Rules Regulating the Florida Bar* 18

Florida Rule of Discipline 3-7.6(h)(1)(A) of the *Rules Regulating the Florida Bar* 18

Florida Rule of Discipline 3-7.6(h)(5)(A) of the *Rules Regulating the Florida Bar* 18

Florida Rule of Discipline 3-7.7(f) of the *Rules Regulating the Florida Bar* 9

Florida Standards for Imposing Lawyer Sanctions . . . . . passim

Florida Standards for Imposing Lawyer Sanctions 2.2(1) 9

Florida Standards for Imposing Lawyer Sanctions 2.2(2) 9

Florida Standards for Imposing Lawyer Sanctions 3.0(6) 23

Florida Standards for Imposing Lawyer Sanctions 9.3(c) 23

Florida Standards for Imposing Lawyer Sanctions 9.3(h) 23

Florida Standards for Imposing Lawyer Sanctions 9.22 . . . . . 4, 27

Florida Standards for Imposing Lawyer Sanctions 9.23 . . . . . 4, 27

Rules Regulating the Florida Bar 4, 7, 18, 22

Other Authorities

Terry Carter, *Bounced from the Bar: Lawyers Who Lose Their Licenses for Fraud or Other Misconduct Can Win Reinstatement, if They Practice in the Right State,* 89 A.B.A.J. 56 (2003) 26

PETITION FOR A WRIT OF CERTIORARI

Leonard W. Krouner ("Petitioner") respectfully petitions for a writ of certiorari to review an order of the Florida Supreme Court.

OPINIONS BELOW

Upon information and belief the Florida Supreme Court docket reporting opinions and orders entered in this case required by Supreme Court Rule 14(d) can be found on the Florida Supreme Court website, http://www.floridasupreme court.org/, under *The Florida Bar v. Leonard William Krouner* (Case Nos. SC03-1644 and SC04-819).

Upon information and belief the Florida Supreme Court disposition order dated June 19, 2007 denying petitioner's motion for rehearing on the merits has not been assigned official citation and is reproduced in Appendix A ("App. A"), p.1a.

Upon information and belief the Florida Supreme Court disposition order dated March 21, 2007 has not yet received an official citation and is reproduced in Appendix B ("App. B"), p.3a.

Upon information and belief the Amended Report of the Referee assigned by the Florida Supreme Court filed on March 28, 2005 is unreported and is reproduced in Appendix D ("App. D"), p.7a.

Upon information and belief the Florida Supreme Court order dated March 1, 2004 making petitioner's license suspension effective nunc pro tunc to May 12, 2003 is unreported and reproduced in Appendix C ("App. C"), p.5a.

JURISDICTION

The Florida Supreme Court disposition order to be reviewed is dated March 21, 2007, and the Florida Supreme Court disposition order denying petitioner's motion for rehearing on the merits is dated June 19, 2007. This petition is timely under 28 U.S.C. § 2101(c), and Supreme Court Rule 13(1) and (3) because it is being filed within 90 days from the Florida Supreme Court order denying rehearing on the merits dated June 19,2007.

The Supreme Court has jurisdiction to review state high court judgments or decrees under 28 U.S.C. § 1257(a) and (b), and U.S. Constitution Article III, § 2, cl. 2. *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat. 304, 324-325, 343-344, 4 L.Ed. 97 (1816)).

The Supreme Court has jurisdiction to consider whether the Florida attorney disciplinary process and Florida Supreme Court orders violate the U.S. Constitution and U.S. Statutes.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Article III, § 2 , cl. 2 judicial power; Article IV, § 2, cl. 1 and Amendment 14, § 1 privileges and immunities; Article VI, cl. 2 supremacy; Amendment 14 and Amendment 1 requiring state action not to infringe freedom of speech, association, and the right to petition government for redress of grievances; Amendment 14, § 1 and Amendment 5 preventing states from depriving any person of life, liberty, or property without due process of law; Amendment 14, § 1 and Amendment 6 requiring states not to limit effective assistance of counsel by ordering punishment for advancing authoritative legal positions in good

faith, and requiring that punishment enhancement be supported by finding aggravating facts in addition to those upon which the original punishment was determined.

The Americans With Disabilities Act, 42 U.S.C. §12131 *et seq.*, prohibiting discrimination by public entities against persons with disabilities.

The above described United States Constitution and Statutory provisions are reproduced in Appendix E ("App. E"), p.22a.

STATEMENT OF THE CASE

On May 12, 2003 Petitioner pled guilty in New York Supreme Court Albany County to three felonies for improper receipt of private disability insurance benefits from October 2000 to October 2001("disability benefit period").

Consent to Florida disbarment was not a condition of the criminal sentence imposed by New York Supreme Court Albany County, or a condition of petitioner's plea agreement as established by the New York sentencing judge's statements, the New York Supreme Court Albany County sentencing order, and sworn statements from petitioner's New York attorney and petitioner introduced in evidence at the March 2005 hearing before Florida Referee (Hon. George Reynolds) who the Florida Supreme Court appointed to hear and recommend sanction in this case. Petitioner's consent to suspension of his Florida bar license in 2003 as represented to the New York Supreme Court Albany County prior to sentencing is confirmed in the Florida Supreme Court order dated March 1, 2004 in App. C, p.5a.

Unopposed evidence and legal authority supporting petitioner's position that petitioner agreed to inform Florida Bar authorities of the New York conviction and consent to Florida Bar license suspension were not mentioned in the Florida Supreme Court disbarment order – reproduced in App. B, p.3a – which approved the Referee's recommendation that petitioner be disbarred for not consenting to Florida disbarment. Evidence of factors mitigating and aggravating sanction in the *Florida Standards for Imposing Lawyer Sanctions* 9.22 and 9.23 – which the Florida Referee's Amended Report found to support suspension in the absence of petitioner's license surrender statement to the New York Supreme Court Albany County, App. D, pp.15a, 16a – were not weighed by the Florida Supreme Court in determining the disbarment sanction. App. B, p.3a. After surrendering his Florida bar license by consenting to its suspension in the Florida attorney discipline proceeding, petitioner participated in the disciplinary proceeding to mitigate sanction as authorized by the *Rules Regulating the Florida Bar*. The Referee's Amended Report, App. D, pp.12a-15a, held that law license surrender by consent to suspension was not the surrender contemplated in the New York criminal proceeding. Evidence supporting petitioner's position that the New York plea agreement did not require consent to Florida disbarment including sworn statements from petitioner, petitioner's New York attorney, the New York sentencing judge's statements, and the New York sentencing order was not mentioned in the Referee's Amended Report, App. D, p.7a, *et seq.*, or Florida Supreme Court disbarment order, App. B, p.3a.

Surrender definitions from dictionaries offered by Florida Bar Counsel and attorney license cases from Florida and other jurisdictions offered by petitioner supporting petitioner's position were not mentioned in the Florida Supreme Court

disbarment order, App. B, p.3a, or in the Amended Referee's Report, App. D, p.7a, *et seq.*

During oral argument Florida Supreme Court Chief Justice Lewis *sua sponte* asked petitioner and Florida Bar Counsel for any authority contrary to holding that readmission to the bar in the disbarred attorney's "home state" be required for readmission to Florida. Petitioner pointed to *Selling v. Radford*, 243 U.S. 46, 51 (1917), urging that the Florida Supreme Court not make readmission to the Florida bar dependent upon readmission to New York bar because New York Judiciary Law § 90 automatic disbarment without notice or hearing does not satisfy minimum due process requirements under the United States or Florida Constitutions, and that disbarment is too harsh a sanction for illness-induced misconducted and a "gross injustice." Petitioner also pointed to the Referee's recommendation at the March 3, 2005 hearing **not to make** New York bar readmission a condition of Florida bar readmission because to do so would be a **"permanent practical disbarment" considering petitioner's age and health**, *infra*, pp.8, 9, that New York's disbarment is a minimum of seven years while Florida's is a minimum of five years, and that Florida has a presumption against readmitting disbarred attorneys, all of which make Florida's disbarment for illness induced misconduct a "gross injustice" under *Selling v. Radford, id.*, and discrimination against nonresident Florida bar members in violation of the U.S. Constitution Article IV § 2, cl. 1 privileges and immunities clause. The Florida Supreme Court order of permanent practical disbarment addressed no issue raised by petitioner in response to Chief Justice Lewis inquiry during oral argument, and no issue raised by Chief Justice Lewis concerning whether conditioning readmission to the Florida Bar after disbarment on readmission to the disbarred attorney's "home state" is consistent with prevailing authority. The Florida

Supreme Court's March 20, 2007 disbarment order and June 19,2007 order denying rehearing not defining "home state" – which is **not** otherwise defined in Florida statutes, regulations, or cases – leaves petitioner, who was originally admitted to law practice in New York but is now domiciled in California, and the public with no definition of "home state" essential to determine when an application for readmission to the Florida bar can be filed.

The Florida Supreme Court denied petitioner's motion on timely notice to Florida Bar counsel under Florida Statutes § 90.202 and § 90.203, App. E, pp. 32a-33a, to consider and/or to take *compulsory judicial notice* of two Florida Supreme Court cases which conflict with the rule that Florida bar readmission be conditioned upon "home state" bar readmission – *Florida Bar v. Karahalis*, 780 So.2d 27 (Fla. 2001) ("*Karahalis*") and *Florida Bar v. Wilkes*, 179 So.2d 193 (Fla. 1965) ("Wilkes"). *Wilkes* and *Karahalis* hold that Florida will not automatically adopt a sister state attorney sanction, and will not adopt a sister state sanction which does not satisfy the *Selling v. Radford*, *id.*, criteria for federal court adoption of a state court sanction. Petitioner urged the Florida Supreme Court to consider that New York's Judiciary Law § 90 automatic disbarment statute – which has been held due process deficient by the Eighth, Ninth, and District of Columbia Circuits, *infra*, pp.21, 22 – renders New York's disbarment of petitioner a legal nullity in Florida under *Florida Bar v. Karahalis*, 780 So.2d 27 (Fla. 2001). The Florida Supreme Court refusing to apply *Karahalis*, *id.*, results in Florida adopting the New York Judiciary Law §90 due process deficient disbarment by disbarring petitioner in Florida until petitioner is readmitted in New York. By adopting the due process deficient New York disbarment order the Florida Supreme Court disbarment order violates petitioner's right under Florida law to have attorney discipline

determined after notice of charge in a Constitutionally due process sufficient hearing.

The Florida Supreme Court did not recognize, apply, discuss, or distinguish its *Karahalis*, *id.*, and *Wilkes*, *id.*, cases because they opposed the rule that a disbarred nonresident Florida bar member cannot apply for readmission to the Florida bar until he is readmitted in his "home state." Florida's disregard of *stare decisis*, uncontroverted evidence, and legal authority in this case is unprecedented.

Florida's disbarment of petitioner starting three years and ten months after petitioner's New York felony conviction – the disbarment date recommended by the Florida Referee – and continuing until after petitioner is readmitted in his "home state" – contrary to the Florida Referee's recommendation – for a nonexistent "attempted misrepresentation" arising from participation in the Florida attorney disciplinary process to mitigate sanction under the *Rules Regulating the Florida Bar* – which was not charged in the Florida Bar disciplinary complaint – violated petitioner's Constitutional due process right to notice of charges, Constitutional free speech right to assert defenses in an official proceeding effecting property and reputation interests, Constitutional effective assistance of counsel right to advocate for a legally authorized result by introducing evidence and legal authority, and Constitutional right not to suffer harsher punishment than determined by the *nisi prius* trier of fact unless additional aggravating facts are found.

Allowing the Florida disbarment order to stand without review would condone absence of due process in state attorney discipline proceedings – an unacceptable Constitutional violation – requiring review by this Court.

A. Without Finding Any Additional Aggravating Facts Not Found by the Referee the Florida Supreme Court's "Permanent Practical Disbarment" of Petitioner Starts the Disbarment Period Three Years and Ten Months after the Date Recommended by the Referee and Requires Readmission in New York as a Condition of Readmission in Florida Which Sanction Was Rejected by the Referee

By order dated **and effective March 21, 2007,** App. B, p.3a, the Florida Supreme Court disbarred petitioner, a nonresident member of the Florida Bar since 1973. The Florida Supreme Court March 21, 2007 order relied upon *Florida Bar v. Untracht*, 923 So.2d 457 (Fla. 2006) ("*Untracht*") and *Florida Bar v. Sanders*, 580 So.2d 594 (Fla. 1991) ("*Sanders*") saying "... attorney disbarred in his home state will not be allowed to practice in Florida until readmitted in his home state." The Florida Supreme Court order dated March 21, 2007 also said "the report of the referee is **approved** and Leonard William Krouner is disbarred." App. B, p.3a.

At the March 3, 2005 hearing Referee Reynolds said (page 83, line 24 to page 84, line 2 of the hearing transcript from the March 3, 2005 hearing before Referee George Reynolds):

> My recommendation to the court [Florida Supreme Court] would be to leave out the New York requirement [readmission to the New York bar as a requirement of readmission to the Florida bar],

> **because it is seven years, and at his age of practice, it becomes a practical [permanent] disbarment.**

[emphasis added].

The Florida Supreme Court **rejected** the sanction recommended in the Referee's Report it said it **approved** by (1) **starting** the Florida disbarment period on **March 21,2007 – three years and ten months later than the May 21,2003 date recommended by the Referee** – and (2) requiring readmission to the petitioner's "home state" bar as a condition of readmission to Florida **contrary to the Referee's recommendation** thereby making the Florida minimum disbarment period indefinite and longer than petitioner's New York and District of Columbia minimum disbarment periods. In Florida – unlike New York– *Rules Regulating the Florida Bar*, Rule 3-7.7(f), and the Florida Bar Standard 2.2(1) and (2) [found at "http://www.floridabar.org" under "lawyer regulation"]– a disbarred attorney must pass the Florida bar examination and a character screening process with a presumption against readmission to be readmitted. The Florida Supreme Court disbarment order made no findings of fact not made in Referee's Amended Report to support the harsher sanction rejected by the Referee.

The Florida Supreme Court disbarment order is silent on why it imposed the sanction rejected in the Referee's Report which it **purportedly approved.**

B. Florida Disbarred Petitioner for Seeking License Suspension in the Florida Disciplinary Proceeding Which it Held to Be an Attempted Misrepresentation Based upon Petitioner's Comments Prior to the New York Sentencing. Attempted Misrepresentation Based upon Presentence Comments in New York Was Not Charged as Misconduct in the Florida Disciplinary Complaint. Petitioner Attempted No Misrepresentation by Participating in the Florida Attorney Disciplinary Process after Consenting to Suspension of His Florida Bar License.

The Amended Referee's Report found, in part:

> This respondent presented compelling mitigating evidence relating to his psychological state of mind at the time of the commission of the felonies. But for respondent's multiple statements to the sentencing court that he would surrender or sacrifice his three licenses to practice law, the referee might have found that Krouner had overcome the presumption of disbarment.

App. D, p.16a.

The record and legal authority does not support the Referee's and the Florida Supreme Court's conclusion that petitioner's license surrender could only be accomplished by consent to disbarment. Petitioner and his New York criminal defense attorney provided sworn statements during the Florida disciplinary hearing on March 3, 2005 that petitioner agreed to notify Florida of the New York conviction but did not consent to Florida disbarment in the New York criminal proceeding. There was no contrary proof. Florida attorney

discipline and Florida license cases offered by petitioner in which license surrender was accomplished by license suspension were not mentioned in the Florida disbarment order. The New York sentencing judge's statement that the sentence was based only upon the amount of insurance benefits received offered by petitioner was not mentioned in the Florida disbarment order. The Florida disbarment order was silent on what the Amended Referee's Report said was the outcome determinative issue of whether petitioner's consent to suspension of his Florida license was a license surrender as a matter of law. The Florida Supreme Court permanently, practically disbarred petitioner for an "attempted misrepresentation" which did not occur by not mentioning evidence and legal authority establishing petitioner's consent to Florida bar license suspension in 2003 was a legal surrender of that license, and the surrender petitioner spoke of in his pre-sentence comments to the New York Supreme Court Albany County justice.

Constitutional due process requirements for attorney discipline cannot be different in each of the 50 states and in each federal court. Minimum Constitutional due process procedures should be required for attorney discipline proceedings conducted in any American jurisdiction. *U.S. v. Kras*, 409 U.S. 434 (1973), *Selling v. Radford*, 243 U.S. 46, 48 (1917).

C. The Florida Supreme Court Disbarment Order Did Not Mention or Apply the *Selling V. Radford*, 243 U.S. 46, 48 (1917), Criteria Adopted in *Florida Bar v. Karahalis,* 780 So.2d 27 (Fla. 2001) When Making Readmission to Petitioner's "Home State" a Requirement of Readmission to the Florida Bar Regardless of Whether the Home State Procedure for Determining Disbarment Was Due Process Deficient or the Home State Sanction Was a "Gross Injustice" as Punishment for Illness-Induced Misconduct.

During oral argument on November 1, 2006 Florida Supreme Court Chief Justice Fred Lewis *sua sponte* asked petitioner and prosecuting Florida Bar Counsel to provide legal authority bearing upon whether a disbarred attorney's readmission to the Florida bar should be conditioned upon readmission to the bar in the attorney's "home state" as that Court held in *Florida Bar v. Untracht*, 923 So.2d 457 (Fla. 2006) ("*Untracht*") and *Florida Bar v. Sanders*, 580 So.2d 594 (Fla. 1991) ("*Sanders*"). Since Referee Reynolds Amended Report did **not** recommend making readmission to petitioner's "home state" bar a condition of readmission to the Florida Bar, and "home state" bar readmission is not a requirement for readmission to the Florida bar under Florida statutes or regulations, the petitioner had no notice that the New York bar readmission would be an issue in the Florida Supreme Court.

In response to Chief Justice Lewis inquiry concerning the "home state" readmission requirement Petitioner moved the Florida Supreme Court to take compulsory judicial notice under Florida Statutes § 90.202 and § 90.203 of (1) *Florida Bar v. Karahalis,* 780 So.2d 27 (Fla. 2001) which holds that Florida applies the criteria identified in *Selling v. Radford,*

243 U.S. 46, 51 (1917), in determining whether the disciplinary sanction rendered against a Florida Bar member by a sister state will be binding on Florida (2) *Florida Bar v. Wilkes,* 179 So. 2d 193 (Fla. 1965), which holds that Florida does not automatically disbar a Florida bar member disbarred in another state (3) *In re Ruffalo*, 390 U.S. 544, 551 (1968), which holds that failure to provide notice of misconduct upon which attorney discipline is based violates the due process rights of a respondent in an attorney discipline proceeding, and (4) *Selling v. Radford*, 243 U.S. 46, 51 (1917), which holds that a federal court will not adopt the sanction ordered by a state court in an attorney disciplinary proceeding where the state court did not accord the respondent due process, or where adoption of the sanction ordered by the state court would result in a gross injustice. The Florida Supreme Court denied the petitioner's motion to take compulsory judicial notice of U.S. Supreme Court and Florida Supreme Court cases and entered the permanent practical disbarment order on March 21, 2007 with no recognition or discussion of *Karahalis, supra, Wilkes, supra, In Re Ruffalo, supra,* or *Selling v. Radford, supra.*

REASONS FOR GRANTING PETITION

The lower court ruling is certiorari worthy under U.S. Supreme Court Rules 10(a) and (c) since it conflicts with "relevant decisions of this Court"; is one of the conflicting decisions in Florida and among state and federal Circuit courts concerning whether due process is required in felony attorney discipline matters; and involves Constitutional issues of national concern including whether imposition of harsher punishment in attorney discipline matters based upon residency violates the U.S. Constitution privileges and immunities and equal protection provisions, and whether a state *(i.e.,* Florida) which provides for notice of charges, a

hearing, and *Standards* for determining sanction in felony attorney discipline matters violates due process guarantees in the U.S. Constitution and its own Constitution by adopting the disbarment order of a state which is a "gross injustice" as punishment for illness induced misconduct, and due process deficient as rendered without notice of charges or hearing.

I. RESIDENCE IS A CONSTITUTIONALLY IMPERMISSIBLE BASIS UPON WHICH TO INCREASE PUNISHMENT IN ATTORNEY DISCIPLINE PROCEEDINGS. FLORIDA'S HOME STATE BAR READMISSION RULE VIOLATES U.S. CONSTITUTION ARTICLE IV, § 2, Cl. 1 PRIVILEGES AND IMMUNITIES BY MAKING THE DISBARMENT PERIOD FOR NONRESIDENT FLORIDA BAR MEMBERS LONGER THAN RESIDENT FLORIDA BAR MEMBERS FOR THE SAME MISCONDUCT AS IT WILL DO FOR PETITIONER BEYOND THAT WHICH RESIDENT FLORIDA BAR MEMBERS WOULD SUFFER FOR THE SAME MISCONDUCT UNLESS THE FLORIDA DISBARMENT ORDER IN THIS CASE IS REVERSED

Florida's rule that a nonresident disbarred Florida attorney cannot be readmitted to the Florida bar until readmitted to the bar in the attorney's "home state" ("readmission rule") is Constitutionally impermissible.

Florida rejected the rationale that allowing attorneys disbarred in another state to practice in Florida would make Florida a haven for disbarred attorneys or that "full faith and credit" required automatic acceptance of a sister jurisdiction attorney sanction by Florida in *Florida Bar v. Wilkes*, 179 So.2d 193 (Fla. 1965).

Florida's readmission rule lengthens the period of disbarment only for nonresident Florida bar members thereby discriminating on the basis of residency in violation of the privileges and immunities clause in United States Constitution Article IV, § 2 and Amendment 14, § 1, and in violation of Amendment 5 due process equal protection clause. An attorney cannot be excluded from law practice solely on the basis of residency. *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985). An attorney should not be disbarred from law practice for a longer period of time in an attorney disciplinary proceeding solely on the basis of residency. Petitioner will be disbarred in Florida for a longer period than a resident Florida bar member guilty of identical misconduct based upon petitioner's status as a nonresident Florida bar member unless the disbarment order is reversed.

II. THE RULING BELOW CONFLICTS WITH SUPREME COURT RULINGS WHICH PROHIBIT SANCTIONING AN ATTORNEY FOR UNCHARGED MISCONDUCT, GIVING LEGAL EFFECT TO ANOTHER JURISDICTION'S SANCTION ORDER WHICH IS A "GROSS INJUSTICE" AS PUNISHMENT FOR ILLNESS-INDUCED MISCONDUCT AND RENDERED WITHOUT NOTICE OF CHARGES AND A HEARING, AND INCREASING THE SEVERITY OF PUNISHMENT IN A QUASI-CRIMINAL PROCEEDING WITHOUT FINDING ADDITIONAL FACTS NOT FOUND BY THE *NISI PRIUS* FACT FINDER

A. Florida Depriving Petitioner of Property and Reputation By Disbarment for Uncharged Misconduct Conflicts With U.S. Supreme Court Decisions

The Florida Bar complaint initiating this attorney discipline proceeding **did not charge petitioner with attempted misrepresentation** to the New York Supreme Court Albany County or the Referee appointed by the Florida Supreme Court for participating in the Florida attorney disciplinary process after petitioner surrendered and sacrificed his Florida bar license by consenting to license suspension as acknowledged by the Florida Supreme Court order dated March 1, 2004 (App. C, p.5a). Nevertheless, the Florida Supreme Court "approved" the Amended Report of the Florida Bar referee which disbarred petitioner for "... attempted misrepresentation to either the [New York Supreme Court Albany County] sentencing court or to this referee..." (App. D, pp.16a, 18a).

The Amended Report of the Florida Referee identified the issue on appeal of the Amended Referee's Report to be one of law, to wit - whether petitioner's litigating to mitigate sanction after consenting to Florida bar license suspension in 2003 was an "attempted misrepresentation" to the New York sentencing court or the Referee. (App. D, p.16a.) During oral argument the Florida Supreme Court *sua sponte* raised the issue of the duration of petitioner's Florida disbarment under its holdings in *Sanders*, *supra,* and *Untracht*, *supra*. It then disbarred petitioner without mentioning its holdings in *Karahalis*, *supra,* and *Wilkes*, *supra*–which conflicted with *Sanders*, *supra*, and *Untracht*, *supra*–or this Court's holding in *Selling v. Radford*, *supra*, which the Florida Supreme Court adopted in *Karahalis*, *supra*.

In Re Ruffalo, 390 U.S. 544, 551-552 (1968), holds that attorney disciplinary matters are "... adversary proceeding proceedings of a quasi criminal nature. *Cf. In re Gault*, 387 U.S. 1, 33. The charge must be known before the proceedings commence." *Also see*, *Wisconsin v. Constantineau*, 400 U.S. 433 at 437 (1971), which held: "Where a person's good name, reputation, honor, or integrity is a stake because of what the government is doing to him, notice and an opportunity to be heard are essential." The Florida Supreme Court violated petitioner's fundamental Constitutional due process right to notice of the charge by disbarring petitioner for uncharged conduct (*i.e.*, "attempted misrepresentation" during the attorney discipline process) in violation of the Supreme Court holding in *In Re Ruffalo*, *id.*

Fundamental Constitutional rights have a single meaning which state judges are bound to respect and enforce whether what is involved is one of the Bill of Rights applicable to the states, *Malloy v. Hogan*, 378 U.S. 1 (1994), or a general guarantee such as due process, *U.S. v. Kras*, 409 U.S. 434

(1973). Florida's disbarment order based upon an uncharged "attempted misrepresentation" in the attorney disciplinary process violated petitioner's fundamental due process right to notice of the charges against him and should be reversed.

B. Florida's Giving Legal Effect to New York's Disbarment Order Which Is a "Gross Injustice" as Punishment for Illness-Induced Misconduct and Rendered Without Notice of Charges or a Hearing Conflicts with United States Supreme Court and Florida Supreme Court Cases

Petitioner was automatically disbarred in New York in May 2003 under New York Judiciary Law § 90 without notice or hearing. New York's Judiciary Law § 90 automatic disbarment rule has been held Constitutionally due process deficient in *In re Thies*, 662 F.2d 771,773 -774, n(12) (D.C. Cir. 1980); *In re Steven Kramer*, 282 F.2d 721,722-723 (9th Cir. 2002); *Rosenthal v. Justices of the Supreme Court of California*, 910 F.2d 561, 564 (9th Cir.1990); and *Matter of Jones*, 506 F.2d 527,528-529 (8th Cir. 1974). If New York is petitioner's "home state", Florida violated petitioner's rights under Florida law by adopting the New York automatic disbarment order rendered without due process notice or hearing when it made New York ("home state"?) bar readmission a condition of readmission to Florida bar after disbarment.

Unlike New York Judiciary Law § 90(4)(a), (b), App. E, p.39a, the *Rules Regulating the Florida Bar*, Rule 3-7.6(b), (h)(1)(A), (h)(5)(A), App. E, pp.26a-28a provide for a Florida bar member to receive notice and hearing prior to determination of sanction in an attorney discipline proceeding based upon a felony conviction. Unlike New York Judiciary

Law § 90, the Florida Standards for Imposing Lawyer Discipline,. App. E, pp. 34a-38a, provide criteria for determining sanction in an attorney discipline case following a felony conviction. Unlike New York, a Florida attorney has the right to submit mitigating evidence to overcome the presumption of disbarment in an attorney discipline case following a felony conviction under *Florida Bar v. Jahn*, 509 So.2d 285 (Fla. 1987).

Since Florida provides due process where New York does not, Florida's incorporating New York's disbarment order rendered in a due process deficient proceeding in the Florida disbarment order is the same as Florida's disbarring petitioner without due process in violation of the U.S. and Florida Constitutions. Following the Florida *Karahalis*, *id.*, case which adopted the criteria in *Selling v. Radford*, *supra*, for determining whether Florida will recognize a sister state attorney sanction would have prevented Florida from recognizing the New York disbarment order in this case as rendered without due process notice or hearing, and as imposing the maximum penalty of disbarment for what the Florida Referee found to be illness-induced misconduct – a "gross injustice" under *Selling v. Radford*, *supra*. However, the Florida Supreme Court refused to recognize or apply its decisions in *Karahalis*, *supra*, or *Wilkes*, *supra*, by including the due process deficient and "gross injustice" New York disbarment order in the Florida disbarment order. Florida violated petitioner's property and due process rights by increasing the minimum length of petitioner's Florida disbarment to be longer than the minimum length of the due process deficient, "gross injustice" New York disbarment. Neither Florida nor any state can be allowed to avoid due process requirements in a license proceeding by adopting a "gross injustice" sanction rendered without due process from another state. Not correcting such a transgression can obviate

Constitutional protections. Interpreting and upholding the Constitution is one of this Court's core judicial responsibilities. Florida's violating Constitutional rights by adopting a "gross injustice" sanction order from a state made without due process presents an issue of national concern meriting review by this Court.

C. The Florida Supreme Court's Imposing a Harsher Punishment than Recommended by the Referee Without Finding Additional Aggravating Facts Violates Petitioner's Sixth Amendment Right Recognized in *United States v. Booker*, 543 U.S. 220 (2005) ("*Booker*")

As previously noted in *Ruffalo* and *Gault*, *supra*, p.17, this Court holds an attorney disciplinary proceeding is quasi criminal in nature requiring due process notice and hearing before imposing a sanction effecting property and reputation interests.

In Florida the Referee takes on the criminal jury function of determining sanction similar to the sentence in a criminal proceeding, and the Florida Supreme Court reviews and finalizes the sanction taking on the role of the criminal trial judge.

The Florida Supreme Court enhanced the sanction recommended in the Amended Referee's Report by increasing the length of disbarment. Florida law provides that sanction in attorney discipline proceedings be determined under the *Florida Bar Standards for Imposing Lawyer Sanctions* ("*Florida Bar Standards*") which involves finding facts to support the sanction. In *Ring v. Arizona*, 536 U.S. 584, 588-589, 602 (2002) this Court said " If a State makes an increase in the defendant's authorized punishment contingent on the

finding of a fact, that fact - no matter how the State labels it - must be found by a jury beyond a reasonable doubt."

Here the Referee recommended a five year disbarment period starting on May 12, 2003, App. E, p.14a, and the Florida Supreme Court imposed a period of disbarment starting on March 20, 2007 which can go on indefinitely if petitioner is not readmitted to his "home state" which the disbarment order did not define, App. B, p.3a. The Florida Supreme Court found no additional aggravating fact to support the enhanced sanction although Florida law provides that sanction in an attorney discipline proceeding be determined by applying the *Florida Bar Standards for Imposing Lawyer Sanctions* to facts. The Florida Supreme Court's lengthening the petitioner's disbarment without finding any additional aggravating fact violates petitioner's Sixth Amendment right to have the trier of fact determine "any particular fact" the law makes essential to punishment recognized in *Booker, id.*

III. UNIFORM CONSTITUTIONAL DUE PROCESS PROCEDURES ARE NEEDED TO RESOLVE CONFLICTS AMONG STATE AND AMONG FEDERAL COURTS CONCERNING REQUIRED DUE PROCESS PROCEDURES IN FELONY ATTORNEY DISCIPLINARY CASES

States and federal circuit courts conflict on whether notice and hearing are required in attorney discipline proceedings following felony convictions. The Second Circuit holds that the New York Judiciary Law § 90 automatic disbarment upon commission of a felony without notice or hearing is constitutional. *In Re Tidwell v. Grievance Committee, et. al.*, 295 F.3d 331 (2d Cir. 2002).

The Eighth, Ninth, and District of Columbia Circuits hold that the absence of notice and hearing in New York Judiciary Law § 90's automatic disbarment of an attorney for a felony conviction violates due process and is unconstitutional. *In re Thies*, 662 F.2d 771,773 -774, n(12) (D. C. Cir. 1980); *In re Steven Kramer*, 282 F.2d 721,722-723 (9th Cir. 2002); *Rosenthal v. Justices of the Supreme Court of California*, 910 F.2d 561, 564 (9th Cir.1990); and *Matter of Jones*, 506 F.2d 527, 528-529 (8th Cir. 1974).

Florida Rule of Discipline 3-7.6, App. E, pp.26a-30a, of its *Rules Regulating the Florida Bar* provides for notice and hearing to determine sanction following an attorney's felony conviction. New York Judiciary Law § 90(4)(a) and (b), App. E, p.39a, mandates automatic disbarment of an attorney following a felony conviction with no notice or hearing.

Review of the Florida disbarment order in this case which avoids Florida due process requirements by giving legal effect to a due process deficient, "gross injustice" New York ("home state"?) disbarment order provides an opportunity for this Court to articulate minimum Constitutional due process procedures in state attorney disciplinary proceedings which will resolve existing conflicts among the states and federal circuit courts concerning whether notice and hearing are required in a felony attorney discipline proceeding prior to disbarment.

IV. REVIEW IS REQUIRED TO DETERMINE WHETHER STATES CAN DISBAR ATTORNEYS FOR GOOD FAITH PARTICIPATION IN THE ATTORNEY DISCIPLINARY PROCESS, AND TO DETERMINE WHETHER NOT CONSIDERING ILLNESS INDUCED MISCONDUCT TO MITIGATE SANCTION IN A STATE ATTORNEY DISCIPLINE PROCEEDING VIOLATES THE AMERICANS WITH DISABILITIES ACT

Florida's disbarring petitioner for participating in the Florida attorney disciplinary process by providing evidence and legal authority in mitigation of sanction has a chilling effect on Constitutional guarantees of free speech, effective assistance of counsel, and the right to petition government for redress of grievances. Petitioner's good faith in seeking a Florida license suspension is established by reliance upon unopposed evidence that the New York plea agreement was satisfied when Florida authorities were notified of the New York conviction and petitioner surrendered his Florida Bar license by suspension, and petitioner's reliance upon cases from Florida and other jurisdictions holding that consent to license suspension is a legally recognized license surrender. Punishment for good faith participation in the attorney disciplinary process is a Constitutionally impermissible prior restraint on the exercise of guaranteed rights. Revoking an occupational license for what the Florida Referee found to be illness induced misconduct violates the federal policy against illness based discrimination set forth in The Americans With Disabilities Act, 42 U.S.C. § 12131, § 12132, App. E, pp.24a, 25a; is contrary to *Florida Standards* 3.0(6), which provides for considering "the lawyer's mental state," and 9.3(c) and (h), which provide for considering the lawyer's "personal or emotional problems" and "physical or mental

disability or impairment" "[i]n imposing sanction after a finding of lawyer misconduct"; and is inconsistent with six Florida attorney discipline cases in which suspension was imposed considering the lawyer's illness when the misconduct occurred. App. J, pp.53a-63a, is an excerpt from Petitioner's Initial Brief to Review Amended Report of the Referee Signed March 28, 2005 offering six Florida Supreme Court cases supporting suspension for illness induced misconduct which were not mentioned in the lower court disbarment order.

CONCLUSION

Florida's disciplining petitioner with a longer period of disbarment than New York or the District of Columbia based upon residence in disregard of the evidence and legal authority including its own decisions, the United States and Florida Constitutions, and this Court's decisions is an unprecedented disregard of a state's obligation as a government entity to follow due process sufficient, nondiscriminatory, procedures in official license proceedings where property and reputation interests are at stake. The police power does not authorize a state to disregard fundamental Constitutional rights by imposing ultimate, discriminatory, sanctions without evidentiary basis in contravention of prevailing legal authority. A consistent, clear, national statement of Constitutional minimum due process procedures in felony state attorney discipline proceedings from this Court will resolve the sharp conflicts among the states and federal Circuits concerning those requirements and encourage the states to recognize and apply rather than disregard the U.S. Constitution in the discharge of their attorney discipline function.

The petition for a writ of certiorari should be granted to determine whether national due process procedures and

required consideration of common criteria such as the *ABA Standards* in attorney discipline proceedings are essential to encourage consistency of sanction for similar misconduct within and among jurisdictions.[1]

---

[1] The Referee's Amended Report **abandoned** consideration of the *Florida Bar Standards* in recommending disbarment. The Referee found that petitioner's participation in the Florida attorney discipline process – after the New York sentencing judge rejected petitioner's request to consider surrender of bar licenses instead of a jail sentence – to be such a serious "attempted misrepresentation" that suspension indicated by application of the *Florida Bar Standards* should not be imposed. App. D, pp.14a - 16a, 18a.

Without applying the *Florida Standards*, finding an additional aggravating fact, or offering any rationale different from the Referee, the Florida Supreme Court increased petitioner's sanction from disbarment recommended by the Referee to "permanent practical disbarment." The Florida Supreme Court relied upon *Untracht, supra*, and *Sanders, supra*, and failed to mention the inconsistent Florida *Wilkes, supra*, and *Karahalis, supra*, cases.

The Florida punishment enhancement increased the inconsistency in sanctions between that ordered for petitioner and that ordered for attorneys who committed more serious practice related crimes. *See, e.g., In re Cappell*, 866 A.2d 784 (D.C. 2004), where suspension was ordered for an attorney who stole client funds while suffering from depression; *In re Weiss*, 839 A.2d 670 (D.C. 2003), where suspension was ordered for a mentally ill attorney who stole law firm funds on 54 occasions totalling $676.465.79; and *Discipline of McLendon*, 120 Wash. 2d 761, 845 P.2d 1006 (Wash. 1993), where suspension was ordered for a mentally ill attorney who pled guilty to felony theft of client funds while on criminal probation, failed to make restitution for $1,127,853 in borrowed client funds, and committed 11 other ethical violations. Florida's punishment enhancement order did not mention that suspension is the appropriate punishment under the

---

Florida Bar Standards applied by the Referee, and under prevailing Florida attorney discipline cases. Also see case discussion in App. J, pp.53a-63a.

Diminishing sanction disparity for similar conduct in attorney discipline matters is a goal of the *ABA Standards for Imposing Lawyer Sanctions* (*"ABA Standards"*) upon which the *Florida Standards for Imposing Lawyer Sanctions* (*"Florida Standards"*) are based. The *ABA Standards* say, in part:

> Inconsistent sanctions, either within a a jurisdiction or among jurisdictions, cast doubt on the efficiency and the basic fairness of all disciplinary systems.
>
> As an example of this problem of inconsistent sanctions, consider the range in levels of sanctions imposed for a conviction for failure to file federal income taxes. In one jurisdiction, in 1979, a lawyer who failed to file income tax returns for one year was suspended for one year, while, in 1980, a lawyer who failed to file income taxes for two years was merely censured. Within a two year period, the sanctions imposed on lawyers who converted their clients' funds included disbarment, suspension, and censure. The inconsistency of sanctions imposed by different jurisdictions for the same misconduct is even greater.
>
> An examination of these cases illustrates the need for a comprehensive system of sanctions. In many cases, different sanctions are imposed for the same acts of misconduct, and the courts rarely provide any explanation for the selection of sanctions.

See also, Terry Carter, *Bounced from the Bar: Lawyers Who Lose Their Licenses for Fraud or Other Misconduct Can Win*

Respectfully submitted,

Leonard W. Krouner
4196 Mt. Hukee Avenue
San Diego, CA 92117-4732
(858) 277-5323

Petitioner pro se

September 17, 2007

Reinstatement, if They Practice in the Right State, 89 A.B.A.J. 56 (2003).

Florida's permanent practical disbarment of petitioner without considering nineteen mitigators supporting a sanction less than disbarment including judgment impaired by multiple illnesses, misconduct not involving client matters, full restitution, public service, community service, rehabilitation, restoration of civil rights, early release from probation, remorse, absence of financial loss, competency as an attorney, not concealing improper activity, not taking public funds, and cooperation in the attorney discipline process identified in *Florida Standards* 9.22 and 9.23 and Florida cases is an inconsistent, harsh sanction resulting from the Florida Supreme Court not applying the *Florida Bar Standards* or Florida attorney discipline cases.

Consistency of sanction in attorney discipline in Florida and between Florida and other jurisdictions starts with uniform Constitutional due process procedures and application of common criteria. This case provides an opportunity to articulate due process standards and criteria to encourage consistent sanction in attorney discipline cases which is still a problem 24 years after the *ABA Standards* were last amended in 1992.